

Senate Bill No. 407

CHAPTER 206

An act to amend Sections 1037.1, 1037.2, 1037.4, and 1037.5 of the Evidence Code, and to amend Section 679.05 of the Penal Code, relating to domestic violence.

[Approved by Governor September 11, 2007. Filed with
Secretary of State September 11, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 407, Romero. Domestic violence.

Existing law generally provides that no person has a privilege to refuse to be a witness or to refuse to disclose any matter or produce any writing, object, or other thing. However, a victim of domestic violence has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication, as defined, between the victim and a domestic violence counselor, as specified.

The California Constitution requires that a statute that would exclude relevant evidence in any criminal proceeding be enacted by a $\frac{2}{3}$ vote.

This bill would, among other things, expand the scope of the privilege by expanding the definition of a domestic violence counselor. The bill would also make other related, conforming changes, and would make specified findings and declarations.

Because this bill would exclude relevant evidence in criminal proceedings, the bill would require a $\frac{2}{3}$ vote.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) It is the intent of the Legislature in enacting this act to clarify and strengthen the applicable statutory definitions associated with the domestic violence victim-counselor privilege. These clarifications are designed to give all parties detailed information about the privilege in accordance with emerging changes in domestic violence programs and services.

(2) These provisions have played a critically important role in protecting the lives and safety of domestic violence victims by allowing them to access shelter programs and supportive services that enable those victims and their children to escape their abusive home environment and achieve independence from their abusers.

(3) However, since its enactment, the domestic violence victim-counselor privilege provisions have not been amended to reflect the growth in the

types of comprehensive domestic violence programs. Consequently, the current statutory definitions relating to this privilege have caused some confusion within the domestic violence community as to persons eligible to invoke the privilege and the types of communications that shall be deemed confidential and privileged.

(b) Finally, the Legislature hereby finds and declares that the amendments to those provisions constitute clarifications and revisions that are consistent with the original intent and purpose of the domestic violence victim-counselor privilege.

SEC. 2. Section 1037.1 of the Evidence Code is amended to read:

1037.1. (a) (1) As used in this article, “domestic violence counselor” means a person who is employed by a domestic violence victim service organization, as defined in this article, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence and who has at least 40 hours of training as specified in paragraph (2).

(2) The 40 hours of training shall be supervised by an individual who qualifies as a counselor under paragraph (1), and who has at least one year of experience counseling domestic violence victims for the domestic violence victim service organization. The training shall include, but need not be limited to, the following areas: history of domestic violence, civil and criminal law as it relates to domestic violence, the domestic violence victim-counselor privilege and other laws that protect the confidentiality of victim records and information, societal attitudes towards domestic violence, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of domestic violence victims, and referral services available to domestic violence victims.

(3) A domestic violence counselor who has been employed by the domestic violence victim service organization for a period of less than six months shall be supervised by a domestic violence counselor who has at least one year of experience counseling domestic violence victims for the domestic violence victim service organization.

(b) As used in this article, “domestic violence victim service organization” means a nongovernmental organization or entity that provides shelter, programs, or services to victims of domestic violence and their children, including, but not limited to, either of the following:

(1) Domestic violence shelter-based programs, as described in Section 18294 of the Welfare and Institutions Code.

(2) Other programs with the primary mission to provide services to victims of domestic violence whether or not that program exists in an agency that provides additional services.

SEC. 3. Section 1037.2 of the Evidence Code is amended to read:

1037.2. (a) As used in this article, “confidential communication” means any information, including, but not limited to, written or oral communication, transmitted between the victim and the counselor in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who

are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the domestic violence counselor is consulted. The term includes all information regarding the facts and circumstances involving all incidences of domestic violence, as well as all information about the children of the victim or abuser and the relationship of the victim with the abuser.

(b) The court may compel disclosure of information received by a domestic violence counselor which constitutes relevant evidence of the facts and circumstances involving a crime allegedly perpetrated against the victim or another household member and which is the subject of a criminal proceeding, if the court determines that the probative value of the information outweighs the effect of disclosure of the information on the victim, the counseling relationship, and the counseling services. The court may compel disclosure if the victim is either dead or not the complaining witness in a criminal action against the perpetrator. The court may also compel disclosure in proceedings related to child abuse if the court determines that the probative value of the evidence outweighs the effect of the disclosure on the victim, the counseling relationship, and the counseling services.

(c) When a court rules on a claim of privilege under this article, it may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and such other persons as the person authorized to claim the privilege consents to have present. If the judge determines that the information is privileged and shall not be disclosed, neither he nor she nor any other person may disclose, without the consent of a person authorized to permit disclosure, any information disclosed in the course of the proceedings in chambers.

(d) If the court determines that information shall be disclosed, the court shall so order and inform the defendant in the criminal action. If the court finds there is a reasonable likelihood that any information is subject to disclosure pursuant to the balancing test provided in this section, the procedure specified in subdivisions (1), (2), and (3) of Section 1035.4 shall be followed.

SEC. 4. Section 1037.4 of the Evidence Code is amended to read:

1037.4. As used in this article, “holder of the privilege” means:

(a) The victim when he or she has no guardian or conservator.

(b) A guardian or conservator of the victim when the victim has a guardian or conservator, unless the guardian or conservator is accused of perpetrating domestic violence against the victim.

SEC. 5. Section 1037.5 of the Evidence Code is amended to read:

1037.5. A victim of domestic violence, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a domestic violence counselor in any proceeding specified in Section 901 if the privilege is claimed by any of the following persons:

- (a) The holder of the privilege.
- (b) A person who is authorized to claim the privilege by the holder of the privilege.
- (c) The person who was the domestic violence counselor at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

SEC. 6. Section 679.05 of the Penal Code is amended to read:

679.05. (a) A victim of domestic violence or abuse, as defined in Sections 6203 or 6211 of the Family Code, or Section 13700 of the Penal Code, has the right to have a domestic violence advocate and a support person of the victim's choosing present at any interview by law enforcement authorities, prosecutors, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the prosecutor if the law enforcement authority or the prosecutor determines that the presence of that individual would be detrimental to the purpose of the interview. As used in this section, "domestic violence advocate" means either a person employed by a program specified in Section 13835.2 for the purpose of rendering advice or assistance to victims of domestic violence, or a domestic violence counselor, as defined in Section 1037.1 of the Evidence Code. Prior to being present at any interview conducted by law enforcement authorities, prosecutors, or defense attorneys, a domestic violence advocate shall advise the victim of any applicable limitations on the confidentiality of communications between the victim and the domestic violence advocate.

(b) (1) Prior to the commencement of the initial interview by law enforcement authorities or the prosecutor pertaining to any criminal action arising out of a domestic violence incident, a victim of domestic violence or abuse, as defined in Section 6203 or 6211 of the Family Code, or Section 13700 of this code, shall be notified orally or in writing by the attending law enforcement authority or prosecutor that the victim has the right to have a domestic violence advocate and a support person of the victim's choosing present at the interview or contact. This subdivision applies to investigators and agents employed or retained by law enforcement or the prosecutor.

(2) At the time the victim is advised of his or her rights pursuant to paragraph (1), the attending law enforcement authority or prosecutor shall also advise the victim of the right to have a domestic violence advocate and a support person present at any interview by the defense attorney or investigators or agents employed by the defense attorney.

(c) An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section.